

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1361

Regulation of Vessels

SPONSOR(S): Steinberg

TIED BILLS:

IDEN./SIM. BILLS: SB 2506

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee		Deslatte	Reese
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

During the 2009 Legislative Session, the Legislature passed HB 1423, which directed the Florida Fish and Wildlife Conservation Commission (FWCC), in consultation with the Department of Environmental Protection (DEP), to establish a pilot program in five locations to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.

The goals of the pilot program are to encourage the establishment of additional public mooring fields and to develop and test policies and regulatory regimes that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of this state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect the marine environment;
- Deter improperly stored, abandoned, or derelict vessels.

Each location must be associated with a properly permitted mooring field. The FWCC, in consultation with the DEP, must select all locations prior to July 1, 2011.

If enacted, this bill deletes s. 327.60 (2)(f), F.S., and changes s. 327.60 (3), F.S., back to the language before the 2009 Legislative Session. The reinstated language states that "local governmental authorities are prohibited from regulating the anchoring outside of properly permitted mooring fields of non-live-aboard vessels in navigation." In doing so, the bill allows local government authorities to regulate the anchoring of live-aboard vessels not in navigation outside of the permitted marked boundaries of mooring fields.

According to the FWCC, there does not appear to be a fiscal impact to state agencies or local governments with the way the bill is currently written. See Fiscal Comments section.

The bill will take effect upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Currently, local governments are prohibited from regulating the anchoring of vessels other than live-aboard vessels outside the marked boundaries of legally permitted mooring fields. According to FWCC, the unregulated anchoring and mooring leads to various problems including:

- The accumulation of anchored vessels in inappropriate locations;
- Unattended vessels;
- Vessels with no anchor watch (dragging anchor, no lights, bilge);
- Vessels that are not properly maintained;
- Vessels ignored by owners that tend to become derelict;
- Confusion with the interpretation of statutes that provide jurisdictional guidance for local governments.

A live-aboard vessel is defined as any vessel used solely as a residence and not for navigation; any vessel represented as a place of business or a professional or other commercial enterprise; or any vessel for which a declaration of domicile has been filed pursuant to s. 222.17, F.S. A commercial fishing boat is expressly excluded from the term 'live-aboard vessel' in s. 327.02 (17), F.S.<sup>1</sup>

FWCC staff met with interested stakeholders over a two-year period prior to the 2010 Legislative Session, to try to find solutions to the unregulated anchoring. FWCC Commissioners came up with two recommendations:

- Develop a model anchoring/mooring ordinance that local governments can adopt.
- Clarify State and local authority to regulate vessels. This would address the issues of unregulated anchoring, waterway management, and local government authority and recommend cleanup language for some of the more confusing boating statutes. Examples of this approach include combining and clarifying s. 327.22, F.S., (regulation of vessels by municipalities or counties); s. 327.40, F.S., (uniform waterway markers for safety and navigation; informational markers); s. 327.41, F.S., (uniform waterway regulatory markers); s. 327.46, F.S., (restricted areas); s. 327.60, F.S., (local regulations; limitations); and rule 68D-22 (Uniform Waterway Markers in Florida Waters), Florida Administrative Code.

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<sup>1</sup> FWCC 2010 analysis, on file  
STORAGE NAME: h1361.ANR.doc  
DATE: 3/3/2010

HB 1423, which was passed during the 2009 Legislative Session, directed the FWCC, in consultation with the DEP, to establish a pilot program in five locations to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.

The goals of the pilot program are to encourage the establishment of additional public mooring fields and to develop and test policies and regulatory regimes that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of this state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect the marine environment;
- Deter improperly stored, abandoned, or derelict vessels.

Each location must be associated with a properly permitted mooring field. The FWCC, in consultation with the DEP, must select all locations prior to July 1, 2011.

Notwithstanding the provisions of s. 327.60, F.S., a county or municipality selected for participation in the program may regulate by ordinance the anchoring of vessels, other than live-aboard vessels as defined in s. 327.02, F.S., outside of a mooring field. Any ordinance enacted under the pilot program may take effect and become enforceable only after the FWCC's approval. The FWCC may not approve any ordinance not consistent with the goals of the pilot program.

The FWCC shall:

- Provide consultation and technical assistance to each municipality or county selected for participation in the pilot program to facilitate accomplishment of the pilot program's goals;
- Coordinate the review of any proposed ordinance with the DEP, the Coast Guard; the Florida Inland Navigation District or the West Coast Inland Navigation District, as appropriate; and associations or other organizations representing vessel owners or operators;
- Monitor and evaluate at least annually each location selected for participation in the pilot program and make such modifications as may be necessary to accomplish the pilot program's goals.

The FWCC must submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014. The pilot program will expire on July 1, 2014, unless reenacted by the Legislature. All ordinances enacted under this section shall expire concurrently with the expiration of the pilot program and shall be inoperative and unenforceable thereafter.

### **Effect of Proposed Changes**

The bill deletes s. 327.60 (2)(f), F.S., and changes s. 327.60 (3), F.S., back to the language before passage of HB 1423 during the 2009 Legislative Session. The reinstated language states that local governmental authorities are prohibited from regulating the anchoring outside of properly permitted mooring fields<sup>2</sup> of non-live-aboard vessels in navigation. In doing so, the bill allows local government authorities to regulate the anchoring of live-aboard vessels not in navigation outside of the permitted marked boundaries of mooring fields.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 327.60, F.S., removing restrictions on county and municipality regulation of certain non-live-aboard vessels not in navigation.

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<sup>2</sup> S. 327.40, F.S.

Section 2. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown

2. Expenditures:

Unknown

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

FWCC states that if changes are made to the bill language to either match the bill to the title language (which pertains to certain non-live-aboard vessels not in navigation, whereas the bill refers to non-live-aboard vessels in navigation), or to try to provide local governments with more power to regulate live-aboard vessels then the following groups would be affected: Florida and non-resident boaters, the marine industry, boater groups, environmental groups, and commercial and residential waterside property owners subject to the provisions of this bill.

### D. FISCAL COMMENTS:

According to FWCC, state agencies and local governments would not be fiscally impacted by the bill as currently written. If changes are made to the bill language to match the bill title, FWCC states the following state entities, as well as local governments, could be fiscally affected to an unknown degree: state law enforcement personnel, the DEP, the Board of Trustees of the Internal Improvement Trust Fund, the Department of Community Affairs, and FWCC.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

### B. RULE-MAKING AUTHORITY:

None

### C. DRAFTING ISSUES OR OTHER COMMENTS:

FWCC offered the following comments:

The reinsertion of the term “in navigation” to this statute does not affect the current state of the law for the following reason, “in navigation” is not defined within Florida Statute. Federal admiralty law however defines “in navigation” so broadly that only a vessel rendered practically incapable of transportation or movement is found to be not navigation. Therefore, the current bill language would allow local governments to regulate floating structures being used as living space (ie: live-aboards) that are incapable of transport upon the water. Local governments have that authority under the existing statute.

One way to achieve the purpose set forth in the title is to redefine the terms, “in navigation” or “live-aboard”. Narrowing the definition of “live-aboard” found in 327.02(17) , F.S., or providing a definition of “in navigation” that is narrower than the Federal admiralty definition would provide local governments with more authority to regulate live-aboard vessels within their jurisdictions. However, it is important to note that any amendments to HB 1361 that provide a definition of “in navigation” or any change made to the 327.02, F.S., statutory definition of “live-aboard” will affect what vessels are impacted by the statutorily created pilot program. The current bill language will not affect the pilot program but if the bill language is changed to match the statement laid out in the title of the bill it could render the legislatively established pilot program moot.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES